Three paragraphs were devoted to acceptance, but only a single one to refusal of the offer. Might another not have helped, advising what should be done when an objection is made? The advice was rather liberal in relation to accepted offers. It seems to me that those in authority should have more tender regard for the fundamentals of fair procedure. When a landowner is to be dispossessed, albeit with compensation, natural justice demands that he should be heard, unless by his own conduct he disentitles himself to such treatment. That, I believe, to be the reason why the court is given a discretion to temper the rigidity of the law. "Special grounds" were not defined and rightly so. Was not hardship a special ground, when the party was not in the least at fault? Except that she did not possess the volume of 1960 legislation for reference was she so much to blame? I do not think that hardship, *bona fide* mistake or mere "ignorance of the law" should be left out altogether when considering special grounds. What are special grounds must be decided according to the facts of each case. Section 44(2) I think affords an example of what should be considered a special ground, viz.: —

"(2) The court shall consider the interests of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not."

The judge had the provisions of this sub-section in mind in the passage quoted from his judgment. With respect it seems to me that if there was the possibility of an adjustment of the appellant's claim by reason of the award made to her brother, it was a material fact not to be brushed aside merely because the question was then premature.

For these reasons the appeal was allowed with costs and the enlargement of time granted as prayed.

Gill and **Ali F.JJ.** concurred.

Appeal allowed.

Solicitors: *Yeow & Chin.*

JOGINDER KAUR & ANOR. v. MALAYAN BANKING LTD. & ANOR.

[F.C. (Ong C.J. (Malaya), Gill and Ali F.JJ.)
October 3, 1970]

[Ipoh — Federal Court Civil Appeal No. 19 of 1970]

Negligence — Res ipsa loquitur — Maxim not applicable where cause of accident is known — Cyclist crossing road knocked down by motor car — Whether driver of motor car negligent in not taking evasive action.

Damages — Fatal accident — Apportionment of liability.

In this case the learned trial judge had dismissed an application for damages arising from a fatal road accident in which the bicycle ridden by the deceased came into collision with a motor car driven by the second respondent. The learned trial judge held that the collision took place when the bicycle was crossing the road and he held that the deceased was wholly responsible for the accident. The plaintiffs appealed.

Held, allowing the appeal: in this case the respondent driver had seen the bicycle and should have taken proper precautions against the cyclist not keeping his machine under control. The driver should have reduced his speed and if this had been done the accident could have been avoided. In the circumstances the driver must be held to be four-fifths responsible for the accident. In the circumstances general damages was assessed at $25,000, four-fifths of which would represent the award to the plaintiffs.

Cases referred to:-

(1) *Lai Kuit Seong* v. *Public Prosecutor* [1969] 1 M.L.J. 182, 183.

(2) *Barkway* v. *South Wales Transport Co. Ltd.* [1950] 1 All E.R. 392, 399.

(3) *Roe* v. *Minister of Health* [1954] 2 Q.B. 66, 68.

(4) *Powell & Wife* v. *Streatham Manor Nursing Home* [1935] A.C. 243.

(5) *Benmax* v. *Austin Motor Co. Ltd.* [1955] 1 All E.R. 326.

FEDERAL COURT.

Atma Singh Gill for the appellants.

P. P. Dharmananda for the respondents.

Cur. Adv. Vult.

Ong C.J. (Malaya): The first appellant, a young widow with four infant children, lost their breadwinner in a fatal road accident when his bicycle came into collision with a Pontiac motor-car driven by the second respondent, a bank manager. The widow suffered the further misfortune of losing her claim for damages under the Civil Law Ordinance 1956 and she now appeals against that decision of the High Court in Ipoh.

According to the statement of agreed facts the accident occurred at about 8.15 p.m. in good weather at the 43½ milestone, on a straight road which is 20 feet wide. The spot was approximately half-a-mile south of Bidor, on the Kuala Lumpur-Ipoh trunk road. The second respondent was driving the Pontiac northward towards Ipoh, while the deceased was cycling south from Bidor, that is to say, they were travelling towards each other.

In the statement of claim it was alleged that the deceased was cycling on his own proper side of the road when the motor-car driven along its wrong side knocked him down. The defence was that, on the contrary, the deceased had been riding along his own right-hand side of the road before the accident, but, as the motor-car approached, he attempted to cross the road from his right to his left, to return to his proper side, and in doing so failed to get clear of the path of the oncoming car.

The first and crucial question, of course, was whether or not the deceased had in truth attempted to cross the road over to his proper side, as alleged by the defence. If it were so, which the trial judge found as a fact, the deceased certainly had contributed to his own misfortune. On the other hand, if on the evidence, he should have found that the deceased was travelling along his own side of the road when he was knocked down, then judgment should have been in the appellants' favour.

As proof of the respondent driver's negligence counsel for the appellants relied on the doctrine of *res ipsa loquitur*, and it was so pleaded in the statement of

claim. I do not think that, on the pleadings and the evidence adduced on both sides, the doctrine has any application in this case. As stated by this court recently in *Lai Kuit Seong* v. *Public Prosecutor*[1] the doctrine

"does not apply where the cause of the accident is known ... the *res* speaks because, and only because, where the accident stands unexplained, the known facts and circumstances, however meagre, may be such that want of reasonable care is safely attributable to the person but for whose negligence the accident could not have happened ... conversely, *res ipsa loquitur* cannot be relied on where the *res* is ambivalent".

Here the trial judge, having seen and heard the second respondent and his witness, accepted their testimony and found that "the collision took place while the bicycle was crossing the road and the deceased was ... in the circumstances of the case, wholly responsible for crossing the road at night in the path of an oncoming car, and this was particularly so when, by being in the first place on the wrong side, he had caused the motorist reasonably to move to the crown of the road".

Counsel for the appellants, both here and at the trial, attacked that evidence in various particulars, which may be summed up as discrepancies in details, omissions to state material facts in the first police report and deductions from the sketch plan. It is sufficient generally to say, in answer, that for the plaintiff to succeed in any case, discrediting the defendant's story alone is not enough, if the affirmative to be proved by the plaintiff is not a success. This is especially so where the defence story is accepted as substantially true.

Here it is sufficient, in my opinion, to look at the photograph of the bicycle to come to the conclusion that the learned trial judge was right. Its frame and rear fork were bent by an impact against its offside; the rear wheel was somewhat buckled too, but the front wheel appears undamaged, although the fork, as part of the frame, was bent. From this alone the natural and logical inference to be drawn is entirely consistent with the bicycle crossing the road from its wrong side. Had the deceased been proceeding straight ahead, along his own side of the road, when he was struck, the front wheel of his bicycle should have shown the effect of taking the full brunt of the impact.

Testing the two contradictory versions separately, each party would seem to allege that the other was behaving in an unbelievable manner. Which then, of the two, was the more improbable, if one has to choose between them? On the one hand, if the appellants were right, the bank manager must have shown totally callous disregard for human life to have driven on the wrong side for no plausible reason whatsoever, since there was on the evidence no other traffic on the road to cause him to do so and the cyclist was clearly visible ahead by the beam of his headlights I do not think he could be such a revolting creature. On the other hand, the appellants may well say: it is no less improbable that the deceased wished to commit suicide by crossing the road in the path of an oncoming vehicle. I have given this question much anxious thought because it is certainly true that the deceased could have had no thought of suicide. Is there any plausible explanation, therefore, for his crossing the road? I think the answer may be found in the hour of the accident. At night the speed and type of an oncoming vehicle is not necessarily immediately apparent as soon as its headlights are seen. Hence the deceased might well have misjudged the intervening distance and considered it safe to cross over. He, in fact, had all but succeeded and had he been a fraction of a second earlier in crossing he should have done so safely. An error of judgment therefore cannot be ruled out as being reasonable and probable. The trial judge having found as a fact that he did attempt to cross the road, my view is that nothing in the evidence would justify this court in coming to a different conclusion.

Having reached this result, I must proceed to consider the share of blame which should be attached to each party for contributing to the accident. From a distance of 80 yards the cyclist had been seen riding in a zig-zag manner on his wrong side of the road. The respondent driver should then have taken proper precautions against any cyclist not keeping his machine under control. Besides evasive action he should have slowed down immediately. Had his speed been reduced the deceased should have crossed over in safety. For this reason it is impossible to absolve the respondent driver from blame. In my opinion he was four-fifths responsible for the accident, while the deceased himself was only one-fifth to blame.

I would accordingly allow this appeal on the ground that the respondents should be liable for four-fifths of the damages and costs. Having seen the judgment of my brother Ali, I would respectfully agree with his assessment of damages.

Gill F.J.: I am also of the opinion that this appeal should be allowed, and I agree with the conclusions of the Chief Justice and of my brother Ali regarding the apportionment of liability as between the deceased cyclist and the respondent, the assessment of damages and the orders proposed as regards the disposal of the appeal.

The appellants as plaintiffs in the action pleaded in paragraph 2 of their statement of claim that the deceased was riding his bicycle on his proper side of the road when he was struck by motor-car BQ1294 which was travelling from the opposite direction and which was at all material times owned by the first-named defendants and driven by their agent or servant the second-named defendant. In doing so, because they had no eye-witnesses of their own, they obviously had to rely on what is shown in the sketch plan and the photographs which formed part of the agreed bundle of documents, the damage sustained by the bicycle and the motor-car and the inferences legitimately and properly to be drawn from the evidence therein contained. This meant that they relied on the doctrine of *res ipsa loquitur*.

The main argument put up by counsel for the respondents (defendants in the action) in support of the judgment appealed from was that as the cause of the accident was known, so that the doctrine of *res ipsa loquitur* did not apply, and that since the plain-

tiffs had failed to prove their case as set out in the statement of claim, the action was rightly dismissed. I do not think that argument can hold water. It has to be borne in mind that the maxim *res ipsa loquitur* is not a principle of substantive law but a rule of evidence. As Lord Normand said in *Barkway* v. *South Wales Transport Co., Ltd.*,[2] "the maxim is no more than a rule of evidence affecting onus. It is based on commonsense, and its purpose is to enable justice to be done when the facts bearing on causation and on the care exercised by the defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant." This was exactly the case here.

In the words of Morris L.J. in *Roe* v. *Minister of Health*,[3] "there are certain happenings that do not normally occur in the absence of negligence, and upon proof of these a court will probably hold that there is a case to answer." It is to be observed that in the court below counsel for the defendants did not take the point that as the plaintiffs had failed to prove what they had averred in their statement of claim there was no case for him to answer, or elect to call no evidence on behalf of the defendants. The cause of the accident became known only after the respondents as defendants in the case produced such evidence as they thought fit in order to discharge the onus which was cast on them by the evidence for the plaintiffs. To quote Lord Normand again:

"It can rarely happen when a road accident occurs that there is no other evidence, and, if the cause of the accident is proved, the maxim *res ipsa loquitur* is of little moment. The question then comes to be whether the owner has performed the duty of care incumbent on him, or whether he is by reason of his negligence responsible for the injury."

In *Barkway's* case[2] the House of Lords held that as the cause of the accident was known *res ipsa loquitur* did not apply, but that on the facts the negligence of the defendants was established. That, in my judgment, is exactly the position in the present case. As my brother Ali has rightly pointed out after a clear and detailed analysis of the evidence, there was sufficient evidence of negligence on the part of the defendants.

Ali F.J.: This is an appeal in a fatal accident case involving a motor-car and a cyclist who died from injuries sustained.

The claim for damages by the deceased's widow and administratrix of his estate was dismissed by the learned trial judge. On the evidence before him he found the deceased cyclist was wholly to blame for the accident. In this appeal the trial court's finding has been attacked on a number of grounds, all of which may be summarised in a few words. That the learned trial judge has erred in placing too much reliance on the oral evidence of the defence witnesses who are either interested witnesses or whose account as to what happened shortly before the collision could not be supported by inferences to be drawn from the facts appearing in the sketch plan and photographs which have been admitted as evidence.

I have no doubt that the learned trial judge in this case has based his conclusion on the question of liability almost entirely on the evidence of the two defence witnesses. In his written judgment the learned trial judge began by expressing the difficulty facing the plaintiff and said this:

"... she could produce no eye-witness of the accident who could testify to the negligence of the defendant."

Immediately after this, he continued —

"For the defence, there was not only the evidence of the driver but also the evidence of his passengers who must therefore be regarded as eye-witnesses. They all testified that the cyclist was cycling in a zig-zag manner on the wrong side of the road and when the driver moved to the crown of the road to pass him safely he suddenly turned to his left, to the crown of the road and into the path of the car."

He then went on to deal with the defence submission which was based largely on the sketch plan. To this the learned trial judge said:

"... Even if it was, the inference that was reasonably to be drawn must argue against the plaintiff. The collision took place while the bicycle was crossing the road and the deceased was, in my view, in the circumstances of the case, wholly responsible for attempting to cross the road at night in the path of an oncoming car, and this was particularly so, when by being in the first place on the wrong side, he had caused the motorist reasonably to move to the crown of the road.

With respect, to look at a sketch and see what one only wants to see and read from it what one wants to read, ignoring all other indications and the circumstances leading to the collision is to indulge in subjective thinking."

In conclusion he said:

"For myself, I saw no reason on the evidence to disbelieve the defence. I therefore dismissed the claim with costs."

Inasmuch as this is a re-hearing of the case and in the light of the circumstances to which I shall refer later, I have found it necessary to consider the recorded evidence as a whole. As always, the question of liability necessarily falls to be decided upon the evidence as to what happened shortly before the collision. In most accident cases oral evidence usually come from bystanders on the roadside or persons, directly or indirectly, involved in the accident itself. But by and large evidence of sketch plans and photographs have always been relied upon and accepted by the courts as neutral. In this case, particularly, the plaintiff, for obvious reasons, could only rely on the sketch plan and the photographs from which certain inferences had to be drawn in order to formulate her case of negligence against the driver of the motor-car. Admittedly, the sketch plan was not drawn to scale but that need not necessarily make it any less reliable for the key to the plan sets out approximately the relative distances from points indicating facts found at the scene of the accident by the police investigating officer. The officer was not called by the plaintiff presumably because it was not thought necessary to do so. On the other hand, generally speaking, in motor accident cases eye-witnesses are not always reliable for a variety of reasons. In this case particularly the eye-witnesses for the defence were persons directly or indirectly involved in the accident. The driver can hardly be described as an independent witness inasmuch as he has an interest in the outcome of the proceedings against him. The other witness, quite apart from being an employee of the respondent bank who owned the car, had every opportunity to discuss the accident after

it had happened or at any rate before he came to the court. The need for his testimony would seem to me imperative as earlier in the police report the driver had given a somewhat different account of the accident. If I may say so, there was absolutely no suggestion in his report that the deceased cyclist was crossing the road shortly before the collision as was alleged at the trial. Justice, therefore, requires that some consideration be given to the sketch plan and the photographs to ascertain not only the probability as to how the accident occurred but also to verify from the facts thereby inferred whether or not the version given by the witnesses at the trial could reasonably be true.

I will start by examining the evidence of the dedefence witnesses. At the trial the driver had said:

"On approaching the town, I saw a cyclist. He was on my left side of the road and coming towards me, i.e. he was travelling on his wrong side of the road. I first saw him about 80 yards away. He was riding in a zig-zag manner. I was then travelling at about 50 m.p.h. There was no speed limit at this point. On seeing the cyclist, I sounded my horn and swerved to the middle of the road.

At this stage, the cyclist also suddenly turned to the middle of the road. When he did that, he was about 50-60 feet from me. I applied my brakes but there was an impact. The car hit the bicycle squarely on the right side. The cyclist was thrown up and he fell."

He was substantially corroborated by the other defence witness who described the accident in these words:

"At this place, I saw a cyclist. He was then about 80 yards or so in front, on my left hand side and travelling towards us. The car was then travelling at about 50 miles. The cyclist was cycling in a zig-zag manner. D.W.1 sounded his horn and tried to apply his brakes. D.W.1 was then travelling in the middle of the road. On seeing the cyclist, D.W.1 swerved slightly to the right. The cyclist then tried to cross the road. He turned to the centre of the road. At this time, the cyclist was only about 40-50 feet from the car. The car was travelling at a reduced speed. There was a collision."

Later he said in cross-examination:

"The car knocked the cycle broadside."

As may be seen, therefore, both the witnesses had testified that they saw the cyclist for the first time some 80 yards or 240 feet away on the wrong side of the road. Both confirmed each other that the car was travelling at about 50 miles per hour and that the cyclist was riding in a zig-zag manner. Both agree that the horn was sounded and this was followed by the car swerving to its right. It was after this, they said, that the cyclist suddenly turned to the middle of the road and the distance between the cyclist and the car then was about 40 - 60 feet. The effect of the evidence thus analysed must necessarily lead to the finding that the bicycle would have been knocked squarely or broadside on its right by the front part of the car. There was, however, no sign of any damage to the front part of the car. As far as the eyes could see the photographs would indicate that the damage to the car was on the right side of its front off-side mudguard. How the cyclist could possibly have come across the path of the oncoming car and collided with the right side of the front mudguard is something which I find it difficult to conceive. Furthermore, if it was true that the cyclist was crossing the path of the oncoming car, the force of the impact produced by a car travelling at about 50 miles per hour would have resulted in the cyclist or his bicycle or anything which belonged to him being thrown forward instead of sideways. As it happened, so the sketch plan indicates, the deceased, his bicycle and his turban were all found on one side of the road to the right of the oncoming car. Thus far it seems clear that the accident could not have happened in the manner described by the two defence witnesses at the trial. In so saying I have reminded myself that I am going against the trial court's finding of fact. Nonetheless, I find comfort in the knowledge that I have adopted an objective test by testing the evidence of the defence witnesses against the background of all evidence offered at the trial. In *Powell and Wife* v. *Streatham Manor Nursing Home*[4] Lord Wright said on page 267:

"... The judge may be deceived by an adroit and plausible knave or by apparent innocence: for no man is infallible; but in the main a careful and conscientious judge with his experience of courts is as likely to be correct in his impressions as any tribunal, unless perhaps, as some would say, a jury of twelve members is preferable. Yet even where the judge decides on conflicting evidence, it must not be forgotten that there may be cases in which his findings may be falsified, as for instance by some objective fact; thus in a collision case by land or sea the precise nature of the damage sustained by the colliding objects or their relative or final positions may be determinant and indisputable facts, and the same may be true of some conclusive document or documents which constitute positive evidence refuting the oral evidence of the witness; such cases have occurred in the experience of most judges and are covered by the third question propounded by Lord Sumner."

In *Benmax* v. *Austin Motor Co. Ltd.*[5] Lord Somervell has observed on page 330:

"The advantages enjoyed by the trial judge have often been stated and are, I am sure, familiar to all appellate courts. The difficult cases are those where there are circumstances on which appellant and respondent can each rely. The judge has based his decision on the way in which witnesses give evidence. Unless there is no dispute at all he always does this. On the other hand, there are sentences in his judgment which indicate very probably, but not certainly, that he did not have present to his mind an answer or document which plainly affects the accuracy of a witness he has relied on, or his general conclusion. I only refer to this in order to emphasise the impossibility, in my opinion, of laying down anything in the nature of a code as to the circumstances in which an appellate court should interfere either by reversing the trial judge or ordering a new trial."

On this note I shall proceed to consider the question of negligence having regard to the sketch plan, the photographs and other documents. The damage to the offside mudguard of the car seems more consistent with the fact that the collision occurred when the two vehicles, the car and the bicycle, were passing one another. The broken windscreen would suggest that the force of the impact had thrown the cyclist against the windscreen from which he bounded off sideways to the right of the car either to the road or to the side-table where he was later found. The brake marks FG, drawn almost parallel to the centre line, clearly suggests that the car was travelling in a straight course almost on the crown of the road but slightly in the wrong half. The driver admitted in evidence that the impact took place when he was astride the centre line. The passenger witness confirmed this when he said:

"D.W.1 was then travelling in the middle of the road."

As regards the deceased cyclist, it is not possible to ascertain from the sketch plan the manner in which he was travelling shortly before the collision. But the driver has stated in his police report that the deceased cyclist was riding in a zig-zag manner in the middle of the road. Even if this was so, he could not have been across the centre line in the wrong half of the road for the brake marks FG would suggest that at the time of the collision the cyclist was still in his own half of the road but fairly close to the centre. From the facts thus inferred and admitted by the driver it is therefore possible to consider the question of liability. The car was travelling on a straight road with its headlights on astride the centre line of the road. There was no suggestion of any other traffic present on the road at the time. There was, therefore, nothing to prevent the driver from seeing at some considerable distance ahead of him an object such as a bicycle, with or without light, which might be on the road. As it happened here, the collision occurred because the driver was unable to take any avoiding action. The clear inference is that he did not see the cyclist until it was too late. Some explanation must be forthcoming from the driver as to why he was unable to take avoiding action. His headlights were bright, the road was about 20 feet wide, there was no other traffic and his car was being driven at about 50 miles per hour. Taking the view, as I do, of the sketch plan and of the damage to the car, it must be held that a *prima facie* case of negligence has been made out against the driver. Needless to say that the appellant/plaintiff has pleaded the doctrine of *res ipsa loquitur*. In different language, the onus was on the driver of the car to prove that he was not negligent. This he attempted to discharge at the trial and the learned trial judge accepted his evidence and that of his witness. If the learned trial judge was right, of course this appeal must fail. But as I have pointed out in some detail earlier in this judgment, the learned trial judge could not be right for the inferences reasonably to be drawn from the sketch plan and the damage to the car would clearly negative any suggestion that the deceased cyclist was crossing the road before the impact as was alleged at the trial. With respect, therefore, I must say the respondents failed to prove that they were not negligent. The strong probability is that the driver of the car was not looking ahead which was his duty to do in the circumstances. That was the implication of his police report when he said he first saw the cyclist 50 feet away. The realisation of this implication had, perhaps, compelled him to change his statement by saying at the trial that he first saw the cyclist 80 yards or 240 feet away.

It remains for consideration whether the deceased cyclist was in any way to blame for the accident. I have given this matter some anxious consideration and it does seem to me from the evidence before the trial court that the cyclist was travelling quite close to the centre line of the road shortly before the collision. Why he was doing that could only be a matter of speculation. But bearing in mind that he was coming from the opposite direction and, therefore, had no difficulty in noticing the headlights of the oncoming car, it was plain carelessness on his part not to have done anything to avoid the risk of being run down by a car which was travelling also in the middle of the road. For this reason, I would apportion liability four-fifths against the driver of the car and one-fifth against the deceased cyclist. Accordingly, this appeal must be allowed.

I will now come to the question of damage which, unfortunately, has not been assessed by the learned trial judge. Special damage has been agreed at $625.00. As regards general damage, the statement of agreed facts would establish that the deceased was 35 years old at the time of the accident. His total earnings in respect of wages, housing, light and water, annual bonus and overtime amounted to $326.92 cents or $326.00 per month. The widow said in evidence that she was given $280.00 per month for food and of this $35.00 would be for the deceased's own keep. There was thus a loss of support amounting to $245.00 per month. On a working life span of between, say, 15 to 20 years, and making allowance for the usual imponderables, 12 years purchase would not be unfair and unreasonable. On that basis, I would assess general damage at $25,000 to which must be added the agree sum of $625. In view of my finding on contributory negligence only four-fifths of this total amount will represent the award to the plaintiff. The deceased left four children, two sons aged 5 and 2, and two daughters aged 6 and 4. Of the amount awarded, $2,000 will go to each of the children and the rest of it all to the widow for herself and the deceased's estate. The children's shares will be held in trust by the Public Trustee until they come of age.

Appellant has appealed in *forma pauperis*. Costs of appeal therefore will be to counsel fixed at $750 including travelling expenses. The appellant shall have four-fifths of the taxed costs in the court below.

Appeal allowed.

Solicitors: *Atma Singh Gill & Co.; Dharmananda & Co.*

KUALA LUMPUR, KLANG & PORT SWETTENHAM OMNIBUS CO. BHD. v. TRANSPORT WORKERS' UNION

[F.C. (Azmi L.P., Gill and Ali F.JJ.) October 12, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. 59 of 1970]

Industrial Law — Trade union — Meaning of "statutory authority" — Whether includes a company incorporated and registered under the Companies Act, 1965 — Person employed by statutory authority prohibited from being a member of trade union whose membership is not confined to persons employed by that statutory authority — Trade Unions Ordinance, 1959, s. 27(3).

Companies — Statutory authority — Companies Act, 1965.

Interpretation — Words in enactment must be understood in their proper context — Cardinal rule of construction.

Section 27(3) of the Trade Unions Ordinance, 1959, which was added by the Essential (Trade Unions) Regulations, 1969, provides that no person employed by a statutory authority shall join or be a member of or be accepted as a member by any trade union unless the membership of that trade union is confined exclusively to persons employed by the particular